

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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WENDY HERBERT,  
Plaintiff,

vs.

MICHAEL ASTRUE,  
Commissioner, Social Security  
Administration,  
Defendant.

MEMORANDUM DECISION AND  
ORDER GRANTING PLAINTIFF'S  
EAJA FEE APPLICATION

Case No. 2:07-CV-34 TS

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In this Social Security case, Plaintiff seeks attorney fees under the Equal Access to Justice Act (EAJA). "Under EAJA, a fee award is required if: (1) plaintiff is a 'prevailing party'; (2) the position of the United States was not 'substantially justified'; and (3) there are no special circumstances that make an award of fees unjust."<sup>1</sup> It is undisputed that Plaintiff is a prevailing party under the EAJA because she obtained a "sentence four"<sup>2</sup> remand. The Commissioner has not challenged Plaintiff's computation of her claimed attorney fees,

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<sup>1</sup>*Hackett v. Barnhart*, 475 F.3d 1166, 1172 (10th Cir. 2007) (citing 28 U.S.C. § 2412(d)(1)(A)).

<sup>2</sup>Sentence four of 42 U.S.C. § 405(g).

their reasonableness, or that the position of the government was not substantially justified. Thus, the Commissioner has not met his burden of showing that his position was substantially justified.<sup>3</sup>

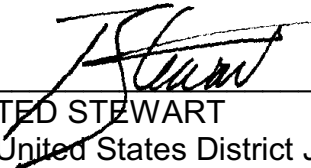
Having reviewed the standard for an award of EAJA fees in Social Security cases<sup>4</sup> the record in this case, the Motion, Memoranda, and Affidavit, the Court finds as follows: Plaintiff is the prevailing party. The government's position was not substantially justified. Plaintiff requests attorney fees for 28.16 hours of attorney time and 4.81 hours for a law clerk. The Court finds that hourly rate is reasonable and that the requested cost of living increase is justified under 28 U.S.C. § 2412(d)(2)(A). Attorney fees in the amount of \$4,942.50 are awardable under the EAJA. It is therefore

ORDERED that Plaintiff's Motion for Attorney Fees under the EAJA (Docket No. 13) is GRANTED. It is further

ORDERED that Plaintiff's counsel is awarded attorney fees in the amount of \$4,942.50 pursuant to 42 U.S.C. § 2412(d).

DATED December 10, 2007.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>3</sup>*Scarborough v. Principi*, 541 U.S. 401, 414 (2004).

<sup>4</sup>*E.g., Hackett*, 475 F.3d at 1172-75 (examining controlling standards for an award of EAJA fees in Social Security cases).